REMARKS

Applicants request favorable reconsideration of the subject application in view of the following amendments and remarks.

In the Office Action dated February 10, 2003, claims 1, 4, 5, and 7 are rejected under 35 U.S.C. §102(b) as being anticipated by EP 0 183 436 to Warren et al (hereinafter as "Warren et al."). Claims 1, 2, and 8 are rejected under 35 U.S.C. §102(b) as being anticipated by JP 10-204473 to Shoji et al (hereinafter as "Shoji et al."). Claims 1, 2, 4, 5, 7 and 8 are rejected under 35 U.S.C. §102(b) as being anticipated by JP 01-254628 to Tanida et al (hereinafter as "Tanida et al."). Claims 1, 4, 5, and 7 are rejected under 35 U.S.C. §103(a) as being unpatentable over US 6,495,172 to France et al (hereinafter as "France et al."). Claims 1, 2, 4, 5, 7, and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tanida et al. in view of Shoji et al.. Claims 1, 2, 4, 5, 7, and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Warren et al. in view of Tanida et al. and Shoji et al.. Claims 3, 6, and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tanida et al.

Applicants acknowledge safe receipt of the Notice of References Cited (PTO-892).

In response to the above rejections, Applicants have amended claim 1 and cancelled claims 2, and 7-8. Applicants also have amended claims 4-6 and added new claims 10-14 to further appropriately define the claimed invention. New claims 10-14 are directed to the use of and method of using valerian oil to reduce the concentration of cortisol in the human body. The new claims are firmly supported by the specification, e.g., page 3, paragraph 22 and Fig. 1. No new matter has been introduced.

Applicants respectfully submit the amendments have overcome the rejections for the reasons set forth below:

Claim Rejections under 35 U.S.C. § 102(b)

Claims 1, 4, 5, and 7 are rejected under 35 U.S.C. §102(b) as being anticipated by Warren. Claims 1, 2, and 8 are rejected under 35 U.S.C. §102(b) as being anticipated by Shoji. Claims 1, 2, 4, 5, 7 and 8 are rejected under 35 U.S.C. §102(b) as being anticipated by Tanida.

"Anticipation under 35 U.S.C. § 102 requires that disclosure in a single piece of prior art of each and every limitation of a claimed invention." *Electro med. Sys. S.A. v. Cooper Life Sciences*, 34 F.3d 1048, 1052 (Fed. Cir. 1994). *See also Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987) ("[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference"). Applicants respectfully submit that because each and every limitations of the independent claims of the present claimed invention (i.e., claims 1, 5 [claim 7 has been cancelled], and new claim), as amended, are not found in the above identified prior art, Applicants' claimed invention is not anticipated by the cited prior art.

Applicants' Claimed Invention

Claims 1, and 5, as amended, contain the following claim limitations:

(1) a stress relieving perfume;

(2) containing a fatty-acid-removed valerian oil; and

(3) the stress relieving perfume reduces cortisol concentration in human body.

Claims 3, 6, and 9 further limit the fatty-acid-removed valerian oil to more than 0.2% by weight in the perfume.

In addition, new claims 10-14 are directed to method of using valerian oil as a cortisol-reducing agent and a use claim of valerian oil as a cortisol-reducing agent.

Warren et al. EP 0 183 436

As acknowledged by the Examiner, Warren et al. disclose a method for reducing physiological and/or subjective reactivity to stress in human being subject to stress conditions. The method consists of administering to such humans an effective amount of substance through inhalation or transdermal application. Warren et al. listed 7 ingredients, one of which is valerian oil. (See Abstract of Warren et al.). There is no teaching or suggestion that the valerian oil used in Warren et al.'s invention is a fatty-acid-removed oil. Also, none has been said in Warren et al. that the valerian oil can reduce cortisol concentration in a human body.

Shoji et al. JP 10-204473

As acknowledged by the Examiner, Shoji et al. disclose a modified valerian root oil by subjecting the valerian root oil to alkali treatment to remove fatty acid. There is nothing in Shoji et al. which teaches or suggests that the fatty acid-removed valerian oil can be used as a stress relieving agent in a perfume and/or for reducing cortisol concentration in a human body.

Tanida et al. JP 01-254628

Tanida et al. teach a valerian oil distilled out at ≤ 80°C under 0.08 mmHg vacuum that is free of malodor. As acknowledged by the Examiner, Tanida et al. do not teach of valerian oil that is free from fatty acid. In fact, Applicants have indicated in the specification, regarding this prior art, as follows:

> "[T]he malodorous components of the said fatty acid can be removed by eliminating a part of a low boiling point lower than 80 degrees with a vacuum distillation as described in Japanese patent laid open No. 1-254628, however, this method has some fear to denature stress relieving components because this method is conducted under heating condition, and also the yield by this method is not so high." (emphasis added). (See Paragraph 21 on page 3).

This further supports that Tanida et al. do not teach or disclose a removal of fatty acids from the valerian oil, rather, they only teach a method to remove the malodorous components of the fatty acids from the valerian oil. In addition, due to high heating condition, the stress relieving component of the valerian oil, according to Tanida et al., would have been or has already been denatured. Finally, like Warren et al. and Shoji et al., none has been said in Tanida et al. that the fatty-acid-removed valerian oil is capable of reducing cortisol concentration in a human body.

Arguments In Support of Applicants' Contention that Applicants' Claimed Invention is Not Anticipation by Warren et al., Shoji et al., and Tanida et al.

Warren et al. and Tanida et al. do not disclose a fatty-acid-removed valerian oil. Thus, Applicants' claimed invention is not anticipated by either Warren et al. or Tanida et al.

Shoji et al. do not dislcose a stress relieving perfume or agent. Thus, Applicants' claimed invention is not anticipated by Shoji et al.

In addition, none of Warren et al., Shoji et al., and Tanida et al. disclose that the fatty-acid-removed valerian oil reduces the cortisol concentration in human body. Thus, Applicants' amended claims as well as new claims are not anticipated by Warren et al., Shoji et al. or Tanida et al.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 1, 4, 5, and 7 are rejected under 35 U.S.C. §103(a) as being unpatentable over France et al. Claims 1, 2, 4, 5, 7, and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tanida et al. in view of Shoji. Claims 1, 2, 4, 5, 7, and 8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Warren et al. in view of Tanida et al. and Shoji et al. Claims 3, 6, and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over Tanida et al.

It is noted, as a preliminary matter, that France et al. U.S. 6,495,172 was issued on December 17, 2002, which is later than the effective filing date of the present invention in the U.S., i.e., February 13, 2002. Also, France et al. have a PCT publication date of June 29, 2000, which is s till later than the priority date (June 20, 2000) of the present invention (which claims the priority of JP Application No. 2000-184132). Thus, France et al. is not a proper prior art reference under 35 U.S.C. § 102. Even if, assuming *arguendo*, France et al. can be prior art to the present claimed invention, France et al. disclose a method of using steam ironing of fabrics as a way of causing reduction of physiological and/or subjective reactivity to stress in a human. (See Abstract of France et al.). As acknowledged by the Examiner, France et al. do not teach valerian oil in a perfume composition. In fact, France et al. never even disclose a fatty- acid-removed valerian oil at all. Thus, France et al. do not render the present claimed invention obvious.

Applicants incorporate by reference the description of the claimed invention as well as prior art (i.e., Warren et al., Shoji et al. and Tanida et al.) as set forth in the above section.

Arguments In Support of Applicants' Contention That Applicants' Claimed Invention is Not Obvious Over Warren et al., Shoji et al., and Tanida et al.

(1) *Applicants' Claimed Invention is Not Obvious over Tanida et al. in View Of Shoji et al.*

"A showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding.'" See, *e.g.*, *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000) (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998)).

There is no motivation for one of ordinary skill in the art to combine the teachings of Tanida et al. and Shoji et al. Tanida et al. teach that the removal of malodor has been achieved without the removal of fatty acids, thus, providing no motivation or incentive for one of ordinary skill in the art to resort to other methods for removal of fatty acids from the valerian oil. As a matter of fact, a removal of the fatty acids from the valerian oil would be essentially "teaching away" from what is taught by Tanida et al.

Shoji et al. teach a fatty-acid-removed valerian oil which is capable of developing fruity and woody aroma while retaining sedative effect. Shoji et al. do not teach or suggest that the fatty-acid-removed valerian oil has stress relieving effect.

Therefore, the only reason that one of ordinary skill in the art may consider combining the teachings of Tanida et al. and Shoji et al. would be through the use of hindsight, i.e., to rely on Applicants' claimed invention as a blueprint in order to seek out the references, instead of relying on the natural teachings of the prior art references. It is impermissible to use the pending claims and accompanying disclosure "as a guide through the maize of prior art references, combining the right references in the right way so as to achieve the same result" and "to reconstruct [Applicants'] invention from such prior art." *Grain Processing Corp. v. American*

Maize-Products Corp., 5 U.S.P.Q.2d 1788 (Fed. Cir. 1988), accord *In re Shuman*, 361 F.2d 1008, 1012, 150 U.S.P.Q. 54, 47 (C.C.P.A. 1966).

Even if, assuming *arguendo*, there is motivation or suggestion to combine Tanida et al. and Shoji et al., the combined teachings would not and cannot render Applicants' claimed invention obvious. That is because neither Tanida et al. nor Shoji et al. teach or suggest that the fatty-acid-removed valerian oil can reduce cortisol concentration significantly in human body. (See e.g., figure 1 of the specification and its corresponding text).

To establish a *prima facie* case of obviousness under 35 U.S.C. §103(a), the prior art reference must teach or suggest all the claim limitations. See MPEP §706.02 (j), citing *In re Vaeck*, 947 F.2d 488, 20 USP Q2d 1438 (Fed. Cir. 1991).

Thus, for the reasons set forth above, the combined teachings of Tanida et al. and Shoji et al. do not render Applicants' claimed invention obvious.

(2) *Applicants' Claimed Invention is Not Obvious over Warren et al. in View of Tanida et al. and Shoji et al.*

As indicated above, none of Tanida et al. and Shoji et al. teaches or suggested that the fatty-acid-removed valerian oil reduces the cortisol concentration in human body. Warren et al. also do not suggest or teach that the cortisol concentration can be reduced due to the use of the fatty-acid-removed valerian oil. In fact, as set forth in the previous section (supra), Warren et al. do not disclose a fatty-acid-removed valerian oil at all. Thus, the combined teachings of Warren et al., Tanida et al., and Shoji et al. fail to teach a claim limitation (i.e., that the fatty-acid-removed valerian oil reduces the cortisol concentration in human body) in all of the independent claims of the present invention so that they do not render Applicants' claimed invention obvious.

(3) *Claims 3, 6, and 9 of Applicants' Claimed Invention are Not Obvious over Tanida et al.*

It is well-settled that if an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. See, *e.g.*, *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Since claims 3, 6, and 9 are either directly or indirectly dependent upon claims 1 and 5, and since claims 1 and 5, as amended, are not obvious over Tanida alone or in view of other references as cited by the Examiner, claims 3, 6, and 9 are not obvious over Tanida et al.

In view of the foregoing, the rejections have been overcome and the claims are in condition for allowance, early notice of which is requested. Should the application not be passed for issuance, the examiner is requested to contact the applicant's attorney to resolve the problem.

Respectfully submitted,

Fei-Fei Chao

Fei-Fei Chao, Ph.D.
Reg. No. 43,538

Date: July 17, 2003

Fei-Fei Chao, Ph.D.
Venable, Baetjer, Howard & Civiletti, LLP
1201 New York Avenue, N.W., Suite 1000
Washington, D.C. 20005
Tel.: (202) 216-8011

doc# 447945